

**Letter of Findings: 07-0506
Indiana Corporate Income Tax
For 2005**

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ISSUES

I. Interest Assessment – Corporate Income Tax.

Authority: IC § 6-8.1-9-2; IC § 6-8.1-10-1.

Taxpayer argues that interest charges – levied against unpaid 2006 corporate income taxes – should be abated in their entirety.

II. Penalty Assessment – Corporate Income Tax.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the assessment of a ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business within Indiana. Taxpayer reported an overpayment of \$12,500,000 on its 2005 income tax return and requested a credit carryforward of \$11,000,000 to its 2006 taxes.

Subsequent to filing its 2005 income tax return, Taxpayer received federal audit adjustments. As a result of the federal audit adjustments, Taxpayer owed an additional \$450,000 of tax for 2005.

Based on the audit adjustments, the Indiana Department of Revenue ("Department") assessed additional tax, penalty, and interest. Taxpayer protested the penalty and interest portion of the assessment. The Department conducted a hearing, and this Letter of Findings results.

DISCUSSION

I. Interest Assessment – Corporate Income Tax.

Taxpayer protests the imposition of penalty and interest on its finally-determined underpayment of its 2005 tax. The first issue is what the effect of Taxpayer's election to carry forward its original 2005 overpayment to 2006 had when Taxpayer's 2005 income tax was redetermined.

Taxpayer argues that the Department had use of its overpayment during the period from its original return claiming the credit until its subsequently determined underpayment; therefore, the Department should not receive interest on the underpayment. Taxpayer's argument is that its payments of taxes are essentially free-flowing deposits of funds that can be used to satisfy any liability that may arise. The Department respectfully disagrees.

Under IC § 6-8.1-9-2(a), if the Department determines that an overpayment has occurred for a given tax year and the Department offsets the overpayment against other tax liabilities, the Department has two options. The first option is to refund the balance of the overpayment. Unless a taxpayer specifically requests otherwise, a refund occurs.

The second option is to credit future tax liabilities in the amount of the balance of the overpayment, which Taxpayer did. When Taxpayer made the election to carry forward its excess tax payments, Taxpayer made an election that the money was no longer for its 2005 taxes but rather for its 2006 taxes. The election to carry forward its refund is no different from a practical perspective than if the Department had issued a check for the amount of overpayment for 2005 followed by an immediate payment of that identical amount by Taxpayer for Taxpayer's 2006 estimated tax liability.

Furthermore, IC § 6-8.1-10-1(b) interest is due "on the amount of the deficiency" if a taxpayer "incurs a deficiency upon a determination by the department." IC § 6-8.1-10-1(e) does not permit waiver of interest except in circumstances not applicable to Taxpayer. Thus, the interest assessment must stand.

FINDING

Taxpayer's protest is denied.

II. Penalty Assessment – Corporate Income Tax.

The second issue is whether a penalty should have been imposed on Taxpayer's ultimately determined underpayment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as

negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient grounds to conclude that its actions were the result of reasonable care and not negligence. Therefore, penalty waiver is proper with respect to Taxpayer.

FINDING

Taxpayer's protest is sustained.

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